HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Petition No.9662, 11640, 13042, 13342, 13349, 13350, 13360, 13433, 13458, 13459, 13460, 13470, 13502, 13668, 13767, 13768, 13769, 13774, 13777, 13779, 13818, 13827, 13865, 13883, 13890, 13892, 13907, 13976, 14100 and 14250 of 2006

Writ Petition No.13042 of 2006:

Between:

B. Muralidhar Reddy and others

... Petitioners

And

The Government of Andhra Pradesh,
Rep. by its principal Secretary,
Revenue Department, Hyderabad and others

... Respondents

:: ORDER::

For petitioners in Writ Petition Nos.13042 and 13892 of 2006 — Sri S. Ramachandra Rao, Senior Advocate, assisted by Sri K.R. Prabhakar, Advocate

For petitioners in Writ Petition Nos.13349, 13470, 13768, 13342, 13458, 14250, 13502, 13368 and 14100 of 2006: — Sarvasri G. Mohan Rao, A. Ravinder, M. Subrahmanyam, P. Naveen Rao, Advocates.

For petitioners in Writ Petition Nos.13350, 13360, 13433, 13459, 13460, 13767, 13769, 13774, 13777, 13779, 13818,

13827, 13865, 13883, 13890,
13907, and 13976 of 2006: None

Sri K. Pratap Reddy, Senior Advocate,Amicus in W.P. No.11640 of 2006,

Counsel for Respondents: Smt.G. Malleswari,
Government Pleader for
Prohibition and Excise

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August 28, 2006

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Per G.S. Singhvi, C.J.

Whether the amendment made in Rule 27 (1) of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Shop Rules') vide G.O.Ms.No.598, Revenue (Ex.II), dated 26-5-2006, which was published in Andhra Pradesh Gazette (Extra-Ordinary) dated May 26, 2006 extending the restriction of 100 meters against the location of liquor shops from the places of public worship, educational institutions and hospitals to Municipal Corporation areas is violative of Articles 14, 19 and 300-A of the Constitution is the question which

arises for determination in these petitions (except taken up Writ Petition Nos.9662 and 11640 of 2006) filed under Article 226 of the Constitution of India.

Writ Petition No.9662 of 2006 is an off-shoot of order dated 10-4-2006 passed by the Court in Writ Petition No.482 of 2006 whereby, while disposing of that writ petition, the Court suo motu directed the Commissioner of Prohibition and Excise to submit a report to the Court regarding location of liquor shops in violation of Rule 27 (1) of the Shop Rules.

Writ Petition No.11640 of 2006 was registered as a taken up petition on the basis of letter dated 2-6-2006 sent by Smt.C. Jayasree, Headmistress, Sri Telaprolu Bapanaiah English Medium High School, Vijayawada with the complaint that "Chandamama Wine Shop" was located at a distance of 20 feet from the school in complete violation of the norms laid down by the government and prayed that the respondents be directed to remove the liquor shop from the vicinity of the school.

The Facts:

For the sake of convenience, we have taken the facts from Writ Petition No.13042 of 2006 filed by B. Muralidhar Reddy and nine others for quashing Clause 15 of G.O.Ms.No.598, Revenue (Ex.III) Department, dated
26-5-2006 whereby Rule 27 of the Shop Rules was amended and for issue of a mandamus to the respondents to allow them to run liquor shops in the existing premises by suspending the operation of the distance rule.

All the petitioners are engaged in the sale of Indian Made Foreign Liquor (IMFL) and Foreign Liquor (FL) at different places in Hyderabad. They were granted licences by the competent authority

in accordance with the provisions of the Andhra Pradesh Excise Act, 1968 (for short, 'the Act') and rules framed thereunder. The term of licences issued in their favour under the Shop Rules ended on 30th June, 2006. In the meanwhile, Collector and District Magistrate, Hyderabad issued notice dated May 27, 2006 for conducting auction for grant of lease of right to sell IMFL/FL by shop for a period of two years commencing from 1-7-2006. All the petitioners submitted their respective tenders for different shops and gave highest bids. Their bids were accepted by the competent authority. Thereafter, Prohibition and Excise Superintendent, Dhoolpet, Hyderabad issued letters dated 5-6-2006 to all the petitioners requiring them to complete the formalities for grant of licence in Form A-4. One of the conditions enumerated in the letters was that the premises should be located in conformity with Rule 27 (1) of the Shop Rules, which had been amended vide G.O.Ms.No.598, Revenue (Ex.II) Department, dated 26-5-2006. The petitioners did not comply with the said condition. Instead, they filed the writ petition under Article 226 of the Constitution with the complaint that the respondents are not allowing them to operate shops from the present sites on the ground that the same are located within 100 meters of the places of public worship or educational institutions or hospitals. The petitioners have relied on the unamended Rule 27 (1) and averred that the amendment made vide G.O.Ms.No.598 dated 26-5-2006 prohibiting location of shops within 100 meters from the places of public worship, educational institutions and hospitals is discriminatory and violative of their fundamental right to equality guaranteed under Article 14 of the Constitution. They have referred to Rule 6 of Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Bar Rules') to show that there is no prohibition on

the running of bar within 100 meters of the places for public worship, educational institutions and hospitals in the municipal corporation areas and pleaded that if liquor can be sold and consumed in the bar situated within 100 meters of places of public worship, educational institutions and hospitals, there is no justification to impose prohibition on the running of shops within 100 meters of such places and institutions. They have further averred that location of liquor shops within 100 meters of the places of public worship, educational institutions and hospitals does not in any manner affect the people living in the vicinity or those going to the places of public worship or educational institutions or hospitals because the liquor is required to be sold in sealed bottles and the same cannot be consumed at the shop.

In the counter filed by Sri B.R. Meena, Commissioner, Prohibition and Excise, Andhra Pradesh, it has been averred that the restriction contained in the amended Rule 27 (1) of the Shop Rules is not discriminatory because the lease and licences are granted for operating shops and bars under different sets of rules i.e., the Shop Rules and the Bar Rules. According to Sri Meena, Rule 27 (1) of the Shop Rules was amended keeping in view the order passed by the High Court in Writ Petition No.482 of 2006. In para 7 of his affidavit, Sri Meena has averred that Rule 27 (1) was amended before commencement of the fresh lease period i.e., 1-7-2006 and, therefore, the same is binding on the petitioners.

In the remaining petitions, except Writ Petition Nos.9662 and 11640 of 2006, the petitioners have made prayer similar to the one made in Writ Petition No.13042 of 2006. In Writ Petition No.13668 of 2006, the petitioners have further prayed for issue of a direction to the respondents to allow them to operate the shops as per the allotment

letter dated 30-6-2006 issued by the concerned Prohibition and Excise Superintendent.

Arguments:

Sri S. Ramachandra Rao, Senior Advocate appearing for the petitioners in Writ Petition Nos.13042 and 13892 of 2006 and Sarvasri G. Mohan Rao, A. Ravinder, M. Subrahmanyam and P. Naveen Rao, Advocates appearing for the petitioners in Writ Petition Nos.13349, 13470, 13768, 13342, 13458, 14250, 13502, 13668 and 14100 of 2006 respectively argued that the amended Rule 27 (1) should be declared violative of Article 19 (1)(g) and struck down because the same imposes unreasonable restriction on the petitioners' fundamental right to trade and business. Learned counsel emphasized that the petitioners had established shops at the present sites by spending huge amounts because they were hopeful of continuing business for a number of years, but now they are being asked to shift the shops by invoking amended Rule 27 (1) of the Shop Rules and, if the impugned rule is not struck down, they will suffer huge financial loss. Learned counsel further argued that the prohibition contained in amended Rule 27 (1) of the Shop Rules against the location of the licensed premises for sale of liquor through shops within 100 meters of the places of public worship, educational institutions and hospitals should be declared discriminatory and violative of Article 14 because there is no such restriction on the sale and consumption of liquor in the bar situated within 100 meters of such places and institutions. To substantiate their argument, learned counsel referred to the restriction contained in Rule 6 of the Bar Rules, which prohibit location of bar up to a distance of 50 meters only from the places of public worship or educational institutions or hospitals in the Corporation areas. They submitted that if a person

operating the bar can sell the liquor within 50 meters from the place of public worship or educational institution or hospital, there is no rationale, rhyme, reason or justification to prohibit location of shops within 100 meters of such places or institutions etc. Sri S. Ramachandra Rao emphasized that his clients have been doing business of sale of liquor for the last twenty years in the shops situated within 100 meters of the places of public worship, educational institutions and hospitals and have given bids much higher than the upset price specified in the notice issued by the District Magistrate for auction of the leases with the hope that they will be able to do business of selling liquor for next two years and argued that they cannot be deprived of the right to carry on trade/business by imposing an unreasonable restriction regarding location of shops within 100 meters from the places of public worship or educational institutions or hospitals. Sri Ramachandra Rao also invoked the doctrine of legitimate expectation and argued that the respondents should not be allowed to compel the petitioners to shift their places of business from the present sites because they had given substantially high bids keeping in view the existing location of the shops. He was joined by other advocates in submitting that amendment made in Rule 27 (1) was not brought to the notice of the prospective bidders including the petitioners and, therefore, the amended rule cannot be made applicable to the auction held for grant of lease for the years 2006-2008. Learned counsel appearing for other petitioners pointed out that in a number of cases, the educational institutions, temples, mosques, churches and hospitals have come up after their clients had established shops for sale of liquor and submitted that the prohibition contained in Rule 27 (1) in the matter of location of liquor shops should not be applied to their cases.

Smt.G. Malleswari, learned Government Pleader for Prohibition and Excise, invited our attention to Andhra Pradesh Gazette No.34 dated May 26, 2006 to show that amendment made in Rule 27 vide G.O.Ms.No.598, Revenue (Ex.II) Department, dated May 26, 2006 was published before issue of notice dated 27-5-2006 by Collector and District Magistrate, Hyderabad inviting tenders for grant of lease for shops for two years commencing from 1-7-2006. She submitted that all the bidders, including the petitioners, were very much aware of the amendment made in the Shop Rules because specific reference to G.O.Ms.No.598 dated 26-5-2006 was incorporated in the notice of auction published in the official gazette. Learned Government Pleader then argued that the petitioners do not have any fundamental right to trade or business in liquor and the restriction imposed on the location of shops within 100 meters of the places of public worship, educational institutions and hospitals does not violate their legal or fundamental rights. She then submitted that the impugned amendment cannot be struck down because the same has been carried out in accordance with the directions given by the Court in Writ Petition No.482 of 2006.

Sri K. Pratap Reddy, Senior Advocate, who appeared as amicus in Writ Petition No.11640 of 2006, emphasised that with a view to achieve the objective set out in Article 47 of the Constitution, namely, raising the level of nutrition and the standard of living of the people and the improvement of public health, the Government of Andhra Pradesh had imposed total prohibition on the sale and consumption of liquor in the State, which remained in force till October 02, 1969, but, thereafter, in the garb of earning revenue, the government allowed sale and consumption of liquor. Sri Reddy submitted that even then restrictions were imposed on the location of liquor shops

etc. within 500 meters of the public places of worship, educational institutions, hospitals etc., but in recent years successive governments have succumbed to the pressure of liquor lobby and reduced the restriction to 100 meters, which was further reduced to 50 meters in the case of municipal corporation areas. Learned Senior Counsel argued that in the name of garnering more revenue, the State cannot abandon its constitutional obligation under Articles 39 (f) and 47 of the Constitution, which ordain that the State policy should be directed to ensure that childhood and youth are protected against exploitation and against moral and material abandonment and the level of nutrition and standard of living of the people is raised and public health is improved by bringing about prohibition on the consumption of liquor. He further argued that the restriction contained in amended Rule 27 (1) must be treated as reasonable because the same is in consonance with the spirit of Article 47 of the Constitution. He submitted that the serenity, calm, peace and tranquility, which is sine qua non for places of public worship like temples, mosques, churches and educational institutions and hospitals will be put to grave peril if liquor shops and bars are allowed to be located within 100 meters of such places and institutions. Sri Reddy then submitted that the learned Single Judge ought not to have issued interim mandatory direction for grant of licence to the petitioners ignoring order dated 10-4-2006 passed by the Division Bench in Writ Petition No.482 of 2006 and the fact that Rule 27 (1) of the Shop Rules had been amended before issue of notices by the District Magistrate inviting tenders for auction of shops for the period of two years i.e., 2006-2008. He argued that it is one of the basics of judicial discipline that the Single Benches should follow the ratio of the judgments of the Division Bench and refrain from

passing contrary orders. In support of this submission, Sri Reddy relied on the judgments of the Supreme Court in **Lala Shri Bhagwan v. Ram Chand**[1], **Union of India v. Godfrey Philips India Ltd.**[2], and **Delhi Development Authority v. Ashok Kumar Behal**[3].

Constitutional and Legal provisions:

"**Constitution of India:**

Article 39. Certain principles of policy to be followed by the State:

The State shall, in particular, direct its policy towards securing-

(a) that the citizen, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment:

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 47. Duty of the State to raise the level of nutrition

and the standard of living and to improve public health:

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Unamended Rule 27 of the Shop Rules (as provided by the learned counsel for the petitioners along with Writ Petition No.13042 of 2006)**:**

27. Selection of Premises:-

(1) The successful tenderer subject to the approval of Prohibition and Excise Superintendent, shall select suitable premises for sale of IL & FL within the Municipal Corporation, Municipality, village/town/city or area/locality as the case may be as notified in the District Gazette. It shall be at least 100 meters away from the place of Public worship, Educational Institutions, Hospitals and 50 meters away from Highways except in Municipal Corporations and 5 kms. belt area of the periphery of Municipal Corporations.

Explanation:- For the purpose of this rule-

(a) “place of public worship’ means a temple registered with the Endowment Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf,

(b) “Educational Institutions” means any Primary School, Middle School and High School recognized by the State Government or Central Government, Junior College or any College affiliated to any University established by law,

(c)“High Way” means National High Way or State High way and shall not passes within the limits of Municipal Corporation,

Municipal Council or the Gouthan in any village or Panchayat area,

(d)“Hospital” means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of at least thirty (30) beds,

(2) The distances referred above shall be measured from the mid-point of the entrance of the licensed premises along with the nearest path by which pedestrian ordinarily reaches to the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the institution/place of public worship.

(3) The boundaries of the premises shall be indicated in the Licence.

(4) There shall be a single door for entry and exit and sales shall be conducted through without giving entry to the customers inside the premises.

Amendments in Rule 27 of the Shop Rules (as printed in the Andhra Pradesh Gazette No.34 dated 26-5-2006)**:**

(1) In sub-rule (1),-

a) the words “except in Municipal Corporations and 5 kms. belt area of the periphery of Municipal Corporations” shall be omitted;

b) in Explanation for the item (c), the following shall be substituted, namely, -

“(c) High Way” means National Highway or State Highway and shall not include the part of the National Highway or State Highway which passes within the limits of Municipal Corporation, Municipality or the Gouthan in any village or Panchayat area”

(2) in sub-rule (2), in the third proviso, for the words “100

meters" the word "100 meters away" shall be substituted;

(3) in sub-rule (5), the word "through" shall be omitted."

Rule 6 of the Bar Rules

6. Restrictions on the grant of Licence:

i) Unless the premises has:-

a) a minimum plinth area of 100 sq. meters.

b) a separate bar room and Restaurant within the licensed premises for consumption.

c) Sanitary equipment like wash basin, water closet,

d) Facility for cooking and serving complete meals of good quality to the consumers as licensed by local authority.

e) Air conditioning or Air cooling facility where liquor is consumed.

f) Adequate vehicle parking arrangement.

ii) Within 100 meters from educational institution recognized by the Government, places for public worship such as Temples registered by the Endowments Department, Mosques registered with the Wakf Board, Churches and Hospitals.

Provided that in the limits of Municipal Corporations and within the belt area of 5 kms. of the periphery of Municipal Corporations, the distance restriction mentioned above shall be 50 meters.

iii) Within 500 meters of predominantly residential area but licenses may however be sanctioned if the proposed premises is located on a main road used for shopping purposes.

Provided that the restrictions in clauses (i) to (iii) shall not be applicable to Star Hotels (3 Star and above) certified by the Tourism Department of the State or Central Government.

iv) within 50 meters of a Highway

v) Unless the applicant produces the permission or the no objection certificate from the local authority concerned for sale of liquor at the premises by the applicant.

vi) unless the applicant produces the lease deed on a Stamp paper for the proposed licensed premises from the owner of the premises.

Explanation:

a) "Place of public worship" means a temple registered with the Endowments Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf;

b) "Educational Institutions" means any Primary school, Middle School and High School recognized by the State Government or Central Government, Junior College or any College affiliated to any University established by law:

c) "High Way" means National High way or State Highway and shall not include the part of the National Highway or State Highway which passes within the limits of Municipal Corporation, Municipal Council or the Gouthan in any village or Panchayat area.

d) "Hospital" means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of at least thirty (30) beds.

The distances referred above shall be measured from the mid-point of the entrance of the proposed Bar premises along with the nearest path by which pedestrian ordinarily reaches to the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the institution/place of public worship or to the entrance of the first house of the predominantly residential area."

Questions to be determined:

From the pleadings and arguments of the learned counsel, the following questions arise for determination by the Court:

1) Whether the petitioners have fundamental right to trade/ business in IMFL/FL and whether amended Rule 27 (1) of the Shop Rules is violative of the petitioners' fundamental right guaranteed under Article 19 (1)(g) of the Constitution?

2) Whether amended Rule 27 (1) of the Shop Rules is violative of Article 14 of the Constitution?

3) Whether the doctrine of legitimate expectation can be invoked for directing the respondents to allow the petitioners to continue to operate liquor shops at the present locations notwithstanding the fact that the same fall within the restriction imposed by amended Rule 27 (1) of the Shop Rules?

4) Whether the learned Single Judge should have passed mandatory interim direction for issue of licences in favour of the petitioners ignoring order dated 10-4-2006 passed by the Division Bench in Writ Petition No.482 of 2006 and amendment made in Rule 27 (1) vide G.O.Ms.No.598 dated 26-5-2006?

Re: Question No.1

We have given serious thought to the entire matter. The question whether the petitioners have fundamental right to trade or business in liquor has to be answered in negative in view of the judgments of the Supreme Court in **Khoday Distilleries Ltd. v. State of Karnataka**[4] and **State of A.P. v. Mcdowell & Co.**[5] In **Khoday Distilleries** (supra), the Supreme Court considered almost all judicial precedents on the subject and laid down the following propositions:

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(*a*) to (*g*) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to

(6) of Article 19 of our Constitution.

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the

manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable

liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

(l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage."

In **State of A.P. v. Mcdowell & Co.** (supra), the Supreme Court examined challenge to the constitutionality of Andhra Pradesh Prohibition Act, 1995, referred to the Constitution Bench judgment in **Khoday Distilleries** (supra), and held:

"The contention that a citizen of this country has a fundamental right to trade in intoxicating liquors refuses to die in spite of the recent Constitution Bench decision in *Khoday*

Distilleries {(1995) 1 SCC 574}. It is raised before us again. In *Khoday Distilleries* (supra), this Court reviewed the entire case-law on the subject and concluded that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquors is considered to be *res extra commercium* (outside commerce). Article 47 of the Constitution, it pointed out, requires the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and all drugs which are injurious to health. For the same reason, the Bench held, the State can create a monopoly either in itself or in an agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Yet an argument is sought to be built upon certain words occurring in clauses (*e*) and (*f*) of the summary contained in para 60 of the decision. In these clauses, it was observed that creation of a monopoly in the State to deal in intoxicating liquors and the power to impose restrictions, limitations and even prohibition thereon can be imposed both under clause (6) of Article 19 or even otherwise. Seizing upon these observations, Shri Ganguly argued that this decision implicitly recognises that business in liquor is a fundamental right under Article 19(1)(*g*). If it were not so, asked the learned counsel, reference to Article 19(6) has no meaning. We do not think that any such argument can be built upon the said observations. In clause (*e*), the Bench held, a monopoly in the State or its agency can be created "under Article 19(6) *or even otherwise*". Similarly, in clause (*f*), while speaking of imposition of restrictions and limitations on this business, it held that they can be imposed "both under Article 19(6) *or otherwise*". The said words cannot be read as militating against the express propositions enunciated in clauses (*b*), (*c*), (*d*), (*e*) and (*f*) of the said summary. The said decision, as a matter of fact, emphatically reiterates the holding in *Har Shankar v. Dy. Excise and Taxation Commr. {(1975) 1 SCC 737}* that a citizen has no fundamental right to trade in

intoxicating liquors. In this view of the matter, any argument based upon Article 19(1)(*g*) is out of place.

For the sake of completeness, and without prejudice to the above holding, we may examine the alternate line of thought. In *Cooverjee B. Bharucha v. Excise Commr. And Chief Commr. {AIR 1954 SC 220}*, a Constitution Bench of this Court expressed its wholehearted concurrence with the opinion of Field, J. in *Crowley* v. *Christensen {136 US 86 (1890)}* to the effect that:

> "There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority."

While laying down the said proposition, Mahajan, C.J., speaking for the Court, referred generally to the position obtaining under Article 19(1)(*g*) and clause (6) of the article. The learned Chief Justice said that the reasonableness of the restriction has to be determined having regard to the nature of the business and the conditions prevailing in that trade. The learned Chief Justice said:

> "The nature of business is, therefore, an important element in deciding the reasonableness of the restrictions."

These observations, it may be noted, were not made with particular reference to trade in intoxicating liquors but are general in nature. Indeed, it is after making these general observations that the Bench proceeded to refer to and express its concurrence with the observations of Field, J. referred to above. The said observations cannot be read as recognising a fundamental right to trade in intoxicating liquors. Any such proposition would run counter to the main holding in the decision referred to above. It is true that in *Krishna Kumar Narula* v. *State of J&K {AIR 1967 SC 1368}*, Subba Rao, C.J., speaking for the Constitution Bench,

adopted a slightly different approach, viz., every trade is a trade; even the trade in intoxicating liquor is a trade; however, the nature and character of the business is relevant for determining the extent of restrictions that can be placed on such trade or business; inasmuch as intoxicating liquors are inherently harmful to the individuals consuming them and to the society as a whole, it can even be prohibited but it cannot be said that trade or business in intoxicating liquors is not a trade or business within the meaning of Article 19(1)(*g*). Even adopting this approach, it would be evident — and the decision in *Krishna Kumar Narula (supra)* recognises it — that the trade and business in intoxicating liquors can be restricted, severely curtailed or even prohibited. The fact that Article 47 of the Constitution expressly speaks of the obligation of the State to endeavour to bring about prohibition of the consumption of intoxicating drinks is itself a clear and definite pointer in this direction. Imposing prohibition is to achieve the directive principle adumbrated in Article 47. Such a course merits to be treated as a reasonable restriction within the meaning of clause (6) of Article 19.

Thus, whichever line of thought one adopts, the result is that the prohibition of manufacture, production, consumption and sale of intoxicating drinks brought about by the Act (as amended by the Andhra Pradesh Act 35 of 1995) is perfectly valid and beyond challenge."

By following the law laid down in the above mentioned decisions, we hold that the petitioners who applied for grant of lease of right to sell IMFL/FL by shop do not have the fundamental right to trade or business in liquor and amended Rule 27 (1) cannot be struck down on the ground that the same is violative of the right of the petitioners guaranteed under Article 19 (1)(g) of the Constitution.

An ancillary question which requires consideration is whether the prohibition contained in the amended Rule 27 (1) against the location of shops within 100 meters of the places of public worship, educational institutions and hospitals is an unreasonable restriction

on the petitioners' right to deal in IMFL/FL. In this context, it is apposite to mention that while dealing with the constitutionality of unamended Rule 27 (1) of the Shop Rules in Writ Petition No.482 of 2006 – **Ameer Khan v. The Commissioner of Prohibition and Excise and others** – a Division Bench of this Court held that there was no justification for adopting different yardsticks for restricting the location of shops in municipal areas on one hand and corporation areas on the other hand. The relevant extracts of that order read as under:

> "A combined reading of Rules 27 and 29 of the Rules makes it clear that the licensee can sell liquor only at the premises specified in the licence and not at any other place. The licensee can shift the location of the licensed premises only after obtaining necessary permission from the Commissioner of Prohibition and Excise and after payment of the prescribed fee. Sub-rule(1) of Rule 27 lays down that the licensed premises shall be at least 100 meters away from the places of public worship, educational institutions, hospitals and fifty meters away from highways except in Municipal Corporations and 5 kms. belt area of the periphery of Municipal Corporations. On a plan reading of these rules, it becomes clear that the restriction contained in first part of sub-rule (1) in the matter of location of the premises is applicable to all the areas specified in the sub-rule including Municipal Corporations and the exception contained in second part of the rule is applicable only to the highways.
>
> In our opinion, the restriction contained in sub-rule (1) of Rule 27 regarding location of the liquor shop is meant to serve the larger public interest. If a liquor shop is allowed to run near the place of worship, it is bound to hurt the feelings and sentiments of the people. Likewise, if the liquor shop is allowed to be located near educational institutions, the same is bound to jeopardize studies of the children and their future. If the licensee runs liquor shop within 100 meters of the hospital, it is bound to cause grave inconvenience to the patients.

In the above backdrop, it is not possible to find any reasonable basis for making a distinction between the Municipal Corporation areas on one hand and municipalities/villages/town areas etc., on the other hand. If the restriction is reasonable valid qua municipalities/villages, towns etc., there can be no justification to relax the restriction in respect of Municipal Corporation areas.

If sub-rule (1) of Rule 27 is interpreted in the manner suggested by the learned Government Pleader for Excise, the same is liable to be struck down on the ground of violation of Article 14 of the Constitution because there is no rationale in classifying the Municipal Corporation areas on the one hand and municipalities/ villages/towns/cites etc. on the other hand into two groups for the purpose of imposition of restriction on the location of the premises for sale of Indian Liquor and Foreign Liquor. In any case, there is no nexus between the classification sought to be made and the object sought to be achieved by imposing restriction on the location of the licensed shop within 100 meters of the public places of worship, educational institutions and hospitals."

Since Rule 27 (1) of the Shop Rules was amended in the backdrop of the observations made by the Court in the aforementioned case, the restriction contained in the amended Rule cannot be termed as arbitrary or unreasonable per se.

When the Courts have recognized that consumption of liquor and other intoxicants is injurious to health and welfare of general public (**Khoday Distilleries** case), then a legislative instrument enacted by the State for restricting the sale and consumption of liquor cannot be declared unreasonable and struck down. Rather, such provision must be treated as a reasonable restriction within the meaning of Article 19 (6) of the Constitution and should be viewed as a step taken by the State for achieving the goal set out in Article 47 of the Constitution, which casts a duty on the State to raise

the level of nutrition, the standard of living of people and take steps for improvement of public health and for that purpose make effort to bring about prohibition on the consumption of intoxicants. Recently, the Supreme Court took cognizance of the growing tendency in the younger generation to get addicted to liquor, referred to Article 47 of the Constitution and made the following observations in **State of Maharashtra v. Nagpur Distillers**[6]:

> "Article 47 of the Constitution of India clearly casts a duty on the State at least to reduce the consumption of liquor in the State gradually leading to prohibition itself. It appears to be right to point out that the time has come for the States and the Union Government to seriously think of taking steps to achieve the goal set by Article 47 of the Constitution of India. It is a notorious fact, of which we can take judicial notice, that more and more of the younger generation in this country is getting addicted to liquor. It has not only become a fashion to consume it but it has also become an obsession with very many. Surely, we do not need an indolent nation. Why the State in the face of Article 47 of the Constitution of India should encourage, that too practically unrestrictedly, the trade in liquor is something that it is difficult to appreciate."

Re: Question No.2:

The next question which merits consideration is whether the distance clause contained in the amended Rule 27 (1) of the Shop Rules is discriminatory and violative of Article 14 of the Constitution.

The argument of the learned counsel that extension of restriction clause to 100 meters in the municipal corporation areas for location of shops is liable to be declared as discriminatory because bars are being allowed to operate within 50 meters of the places of public worship, educational institutions and hospitals in the municipal corporation area sounds attractive, but lacks merit and is liable to be

rejected. Here it is apposite to mention that the State Government has already decided to amend Rule 6 (1) (ii) of Bar Rules in view of the ratio of order dated 10-4-2006 passed in Writ Petition No.482 of 2006 – **Ameer Khan v. The Commissioner, Prohibition & Excise**. To this effect, a statement was made by the learned Government Pleader for Prohibition and Excise on 27-7-2006 in the proceedings of Writ Petition No.13301 of 2006.

Even otherwise, we are convinced that the restriction contained in the amended Rule 27(1) of the Shop Rules on the location of shops within 100 meters of the public places of worship, educational institutions and hospitals cannot be declared discriminatory because the licences for running the shops and bars are governed by different sets of rules and two types of licenses cannot be treated at par for the purposes of applying Article 14 of the Constitution and the fact that the State has so far not imposed similar restriction on the location of bars in municipal corporation areas cannot be a ground for striking down the restriction imposed on the location of shops keeping in view the provisions of Article 47 of the Constitution. The equality clause contained in Article 14 carries with it a positive concept and it cannot be invoked for striking down a rule enacted by the State Government for achieving one of the Directive Principles set out in Part IV of the Constitution.

A somewhat similar question was considered by the Supreme Court in **Union of India v. International Trading Co.**[7] and answered in negative. The facts of that case were that the respondents applied for and were granted permits under the provisions of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 (in short “the Act”) and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules,

1982 (in short “the Rules”). Permits were granted in the Exclusive Economic Zone of India in the prescribed form. The said permit authorized the respondent applicants to obtain on lease and operate foreign deep-sea fishing vessels in terms of the Act and the Rules. The permit was, however, not renewed after its period of initial currency. Stand of the applicants was that in each case permit was valid for a period of 15 years from the date of issue, since they were granted in accordance with the Government of India’s policy relating to fishing of deep sea resources in Indian Exclusive Economic Zone by leased foreign deep-sea fishing vessels, and were operative for a period of 15 years. There is a marked distinction between a chartered vehicle and a leased vehicle because different periods have been prescribed for currency of the permits concerned. Though applications for renewal were filed with requisite fees, no express order was passed in any of the cases declining to grant permit. However, pay orders covering renewal fee were returned to the applicants. Grievance is made that no reason has been indicated and, there is also no reference to any policy decision for not effecting the renewal. The writ petitions filed by the respondents were dismissed by the learned Single Judge. On appeal, the Division Bench allowed the writ petitions. While rejecting the plea of discrimination, which had found favour with the Division Bench of the High Court, the Supreme Court observed as under:

> “What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since

something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.

It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any

discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

The ratio of the aforementioned judgment was applied by the Supreme Court in **Vikrama Shama Shetty v. State of Maharashtra**[8]. In that case, the petitioner had challenged refusal of the competent authority to grant licence to trade in liquor under Bombay Foreign Liquor Rules, 1953 on the ground that the establishment of the appellant was situated within prohibitory distance of 75 meters from the mosque. One of the points urged before the Supreme Court was that other shops have been granted licence in violation of the distance criteria. While rejecting this plea, the Supreme Court referred to the judgment in **Union of India v. International Trading Co.** (supra) and held that improper permission given in another case cannot be a ground for invoking Article 14 of the Constitution.

Re: Question No.3:

The doctrine of legitimate expectation invoked by Sri S. Ramachandra Rao and other learned counsel is not available to the petitioners for seeking a direction to allow them to operate shops from the present premises because they had given bids knowing fully well that Rule 27 (1) has been amended by G.O.Ms.No.598 dated 26-5-2006. The opening note of notification dated 26-5-2006 which was published in Hyderabad District Gazette reads as under:

"Andhra Pradesh Excise Lease of right of selling by Shop and conditions of Licence Rules, 2005 (including amendment) vide G.O.Ms.No.598, Rev., (Ex.II) Dept., dated 26-5-2006."

It is, thus, evident that each of the tenderer including the petitioner had been made aware of the amendment carried out in

Rule 27 (1) vide G.O.Ms.No.598, dated 26-5-2006. All of them gave bid keeping in view the fact that licence will be granted in accordance with amended Rule 27 (1), which contains restriction of 100 meters on the location of shops and from the places of public worship, educational institutions and hospitals. Therefore, it is not open to the petitioners to contend that they had legitimate expectation to get licence to operate the shops as per the unamended Rule 27 (1) and the respondents should be directed not to insist on enforcing compliance of amended Rule 27 (1). The term of the licences granted to the petitioners for the year 2005-06 was up to 30-6-2006. Therefore, it is not possible to accept their plea that they had made huge expenditure for establishing premises for running the shop in anticipation of grant of licence for future and the respondents are estopped from applying the distance criteria contained in the amended Rule 27 (1) to their cases.

In **Union of India v. International Trading Co.** (supra), the Supreme Court negatived the argument based on the doctrine of legitimate expectation and observed:

> "Doctrines of promissory estoppel and legitimate expectation cannot come in the way of public interest. Indisputably, public interest has to prevail over private interest. The case at hand shows that a conscious policy decision has been taken and there is no statutory compulsion to act contrary. In that context, it cannot be said that the respondents have acquired any right for renewal. The High Court was not justified in observing that the policy decision was contrary to statute and for that reason direction for consideration of the application for renewal was necessary. Had the High Court not recorded any finding on the merits of respective stands, direction for consideration in accordance with law would have been proper and there would not have been any difficulty in accepting the plea of the learned counsel for the respondents.

But having practically foreclosed any consideration by the findings recorded, consideration of the application would have been a mere formality and grant of renewal would have been the inevitable result, though it may be against the policy decision. That renders the High Court judgment indefensible."

In **Kuldeep Singh v. Govt. of NCT of Delhi** (supra), the Supreme Court upheld the decision of the Government of Delhi to rescind the earlier excise policy and negatived the argument based on the doctrine of legitimate expectation by recording the following observations:

"It is, however, difficult for us to accept the contention of the learned Senior Counsel Mr Soli J. Sorabjee that the doctrine of "legitimate expectation" is attracted in the instant case. Indisputably, the said doctrine is a source of procedural or substantive right. (See *R.* v. *North and East Devon Health Authority, ex parte Coughlan* {2001 Q.B. 213}.) But, however, the relevance of application of the said doctrine is as to whether the expectation was legitimate. Such legitimate expectation was also required to be determined keeping in view the larger public interest. Claimants' perceptions would not be relevant therefor. The State actions indisputably must be fair and reasonable. Non-arbitrariness on its part is a significant facet in the field of good governance. The discretion conferred upon the State yet again cannot be exercised whimsically or capriciously. But where a change in the policy decision is valid in law, any action taken pursuant thereto or in furtherance thereof, cannot be invalidated.

The State in its advertisement clearly stated:

> "The grant of L-52 licence shall be subject to the acceptance of the application by the specified competent authority who may accept or reject any application without assigning any reason. The licensing authority shall be under no obligation to grant any licence for which application has been made."

In view of clear stipulation made in the advertisement therefor, the appellants could not have had any legitimate

expectation that they would invariably be granted a licence to deal in liquor. A date for grant of licence, however, was put in the case of Surinder Katiyal. The said date has been given evidently having regard to the time-frame made in the advertisement. It must have been done under a misconception. Such a clear mistake on the part of the authorities would not clothe them with any legal right. His application was received on

10-12-2004. While acknowledging receipt of the said application, it was stated that the licence will be issued on 10-1-2005. The same, however, would not mean that the contents of his application were not required to be verified in the light of the statutory requirements. Furthermore, he withdrew his application so as to enable him to apply for another vend. He filed such an application only on 8-2-2005 which was acknowledged, as noticed hereinbefore, by the State in terms of its letter dated 6-5-2005. The said letter dated 6-5-2005 did not contain any promise that the licence would be granted by a particular date. Even otherwise, it was impermissible for the respondents to specify a date on which the licence shall be granted keeping in view the fact that it was required to process a large number of applications. It is, thus, not a case where the doctrine of legitimate expectation would be attracted."

Re: Question No.4:

The question whether a Single Bench can pass order ignoring the law laid down by the Larger Bench does not require detailed elucidation and must be answered in negative in view of the judgments of the Supreme Court in **Lala Shri Bhagwan v. Ramchand** (supra), **Union of India v. Godfrey Philips India Ltd.** (supra) and **Delhi Development Authority v. Ashok Kumar Behal** (supra). We are sure that if the learned Single Judge had kept in view the principles laid down in the above decisions and the fact that G.O.Ms.No.598 dated 26-5-2006 had, in fact, been published in the Andhra Pradesh Gazette No.34 dated 26-5-2006 and that this fact was incorporated in notice dated 27-5-2006 issued by District

Collector, Hyderabad, she would not have passed interim orders directing the respondents to issue licence to the petitioners ignoring amended Rule 27 (1).

The argument of the learned counsel for some of the petitioners that amended Rule 27 (1) cannot be applied to their clients because the same had not been published is liable to be negatived with the short observation that the amended rule had, in fact, been published in the Andhra Pradesh Gazette No.34 dated 26-5-2006 and, as mentioned above, before submitting tender, each of the petitioners knew it fully well that Rule 27 (1) has been amended.

In the result, Writ Petition Nos. 13042, 13342, 13349, 13350, 13360, 13433, 13458, 13459, 13460, 13470, 13502, 13668, 13767, 13768, 13769, 13774, 13777, 13779, 13818, 13827, 13865, 13883, 13890, 13892, 13907, 13976, 14100 and 14250 of 2006 are dismissed. Interim orders passed in these cases are vacated. However, keeping in view the fact that petitioners have succeeded in obtaining licences in furtherance of interim orders passed by the learned Single Judge, we deem it proper to allow them one month time for shifting the shops from the present locations and bring them in conformity with amended Rule 27 (1) of the Shop Rules. If the petitioners fail to shift the shops from the present site and bring the same in conformity with amended Rule 27 within one month, then the competent authority shall cancel their licenses and ensure that the shops are closed.

Writ Petition Nos.9662 and 11640 of 2006 are disposed of as infructuous.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

August 28, 2006

svs

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[1] AIR 1965 SC 1767
[2] AIR 1986 SC 806
[3] AIR 2002 SC 2940
[4] (1995) 1 SCC 574
[5] 2006 AIR SCW 3627 = (2006) 5 SCC 702
[6] (2006) 5 SCC 112
[7] (2003) 5 SCC 437
[8] 2006 AIR SCW 3877 = (2006) 6 SCC 70